SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 656

WILBUR F. BOOTH

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42540

WILBUR F. BOOTH

vs.

THE UNITED STATES

Statement of Facts and Certificate

Mr. John S. Flannery appeared for the plaintiff.

Messrs. Frank J. Wideman and Alexander Holtzoff appeared for the defendant.

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, and Judge Whaley.

STATEMENT OF FACTS

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following:

Plaintiff, Wilbur F. Booth, duly filed his petition in the Court of Claims on the 7th day of November, 1933, in which he asked judgment against the United States in the sum of $697.93 as salary due him for the months of June to October, 1933, inclusive, all of which will more particularly appear from his said petition, a copy of which accompanies this certificate and is marked "Exhibit A".

The petition of plaintiff, among other things, alleges in substance:

That on March 18, 1925, the President of the United States, by and with the advice and consent of the Senate, duly appointed plaintiff United States Circuit Judge for the Eighth Judicial Circuit, and thereafter, on March 27, 1925, plaintiff duly qualified, and ever since has been engaged in the performance of his duties as such United States Circuit Judge.

[fol. 2] Plaintiff attained the age of seventy years on August 22, 1931.

That for many years prior to and up to the time of his appointment and qualification as United States Circuit

Judge, the plaintiff had held the office of Judge of the United States District Court for the District of Minnesota, and by November 28, 1931, the plaintiff had served continuously as a District or Circuit Judge for more than seventeen years.

That on January 1, 1932, the plaintiff retired as a United States Circuit Judge, pursuant to the provisions of section 260 of the Judicial Code, as amended by the Act of February 25, 1919, which permits judges, instead of resigning, to retire upon the salary of which they are then in receipt, from regular active service. That ever since his retirement the plaintiff has continued to perform the duties of retired United States Circuit Judge, in the manner provided by law, and has sat as a member of the United States Circuit Court of Appeals for the Eighth Judicial Circuit at a number of the terms thereof, and has participated in the hearing and decision of many causes pending in that court.

Plaintiff further avers that at the date of his appointment the salary fixed by law for a United States Circuit Judge was $8,500 per annum. That the salary of United States Circuit Judges was increased to $12,500 per annum by the Act of December 13, 1926 (chap. 6, sec. 1; 44 Stat. 919) payable in equal monthly installments, and that at the date of plaintiff's retirement his salary fixed by law was $12,500 per annum.

Section 13 of the Independent Offices Appropriation Act, approved June 16, 1933 (Public Act No. 78), is as follows:

"For the period of the fiscal year ending June 30, 1933, remaining after the date of the enactment of this Act, and during the fiscal year ending June 30, 1934, the retired pay of judges (whose compensation, prior to retirement or resignation, could not, under the Constitution, have been diminished) is reduced by 15 per centum."

Pursuant to the provisions of said Act, and for the period from June 15, 1933, to and including October 31, 1933, the plaintiff has been paid by the United States as his compensation as United States Circuit Judge, retired, at a rate fifteen per cent below that fixed by law at the date of his retirement, and by reason thereof there has been withheld from him for the period mentioned the sum of $697.93. That he has protested against the enforced

reduction attempted by the Act of June 16, 1933, deeming it his duty to maintain the independence of the judiciary and resist unconstitutional diminution of the compensation of Federal judges, but the officials of the Department of Justice, whose disbursing officers pay compensation of judges, have advised the plaintiff that the said Act of June 16, 1933, is binding upon the Department and must be complied with by its disbursing clerk in paying the salaries of retired judges, unless and until it is declared invalid by a court of competent jurisdiction.

Plaintiff further avers in his petition that the Act of June 16, 1933, is unconstitutional, null and void, and violates section 1 of article III of the Constitution of the United States, which provides that the judges shall at stated times receive for their services compensation which shall not be diminished during their continuance in office.

Plaintiff is the owner of the claim, of which there has been no assignment or transfer and has at all times borne true allegiance to the Government of the United States and has never in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and is a citizen of the United States.

[fol. 4] To this petition the defendant has filed a demurrer, on the ground that the petition does not state a cause of action against the defendant.

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the record before it the Court finds it necessary for a proper disposition of the case that certain constitutional questions should be determined. These constitutional questions are as follows:

QUESTIONS CERTIFIED

1. Does a United States District or Circuit Judge who, having served continuously for ten years and attained the age of seventy years, does not resign but retires under the provisions of section 260 of the Judicial Code, as amended, continue in office within the meaning of section 1 of article III of the Constitution which forbids diminution of the compensation of Judges during their continuance in office?

2. Where the salary of a United States District or Circuit Judge is increased by law after his appointment and

he has subsequently retired in full compliance with the provisions of section 260 of the Judicial Code, as amended; is a reduction of his compensation as a retired Judge to an amount not below that fixed by law as his salary at the time of his appointment a diminution of his compensation within the meaning of section 1 of article III of the Constitution?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the [fol. 5] above questions and certify and transmit and refer the same to the Court of Claims of the United States for its guidance in the further progress of the case.

Fenton W. Booth, Chief Justice. Wm. R. Green, Judge. Benjamin H. Littleton, Judge. T. S. Williams, Judge. Richard S. Whaley, Judge.

[fol. 6] EXHIBIT "A"

IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 42540

WILBUR F. BOOTH

vs.

THE UNITED STATES

PETITION—Filed November 7, 1933

Plaintiff, Wilbur F. Booth, respectfully states:

1. He is a citizen of the United States and a resident of the City of Minneapolis, in the State of Minnesota.

2. On March 18, 1925, the President of the United States, by and with the advice and consent of the Senate of the United States, duly appointed the plaintiff United States Circuit Judge for the Eighth Judicial Circuit, and thereafter, on March 27th, 1925, the plaintiff duly qualified as such Circuit Judge, and ever since said date, has been engaged in the performance of the duties of that office.

3. For many years prior to and up to the time of his appointment as United States Circuit Judge, the plaintiff

had held the office of Judge of the United States District Court for the District of Minnesota. He attained the age [fol. 7] of seventy years on August 22, 1931, and by November 28, 1931, the plaintiff had served continuously as a Federal judge for more than seventeen years.

4. On or about November 28, 1931, the plaintiff signed and caused to be delivered to the President of the United States a written request for retirement, in which the plaintiff stated:

"If it is not incompatible with the good of the service, and subject to your approval, it is my wish to retire, effective on as early a date as you may find feasible to fix, as United States Circuit Judge of the Eighth Circuit, under that provision of the United States Statutes (Title 28, Section 375, U. S. Code) which reads as follows:

"'But, instead of resigning, any judge other than a justice of the Supreme Court, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service on the bench, and the President shall thereupon be authorized to appoint a successor; but a judge so retiring may nevertheless be called upon by the senior circuit judge of that circuit and be by him authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake, or he may be called upon either by the presiding judge or senior judge of any other such court and be by him authorized to perform such judicial duties in such court as such retired judge may be willing to undertake.'"

In said document the plaintiff further stated:

"I believe this step is in accord with the purpose of the Statute, and I think that it will strengthen the Court by securing the services of a younger man, while not entirely dispensing with mine."

[fol. 8] Under date of December 4, 1931, the President of the United States addressed to the plaintiff, and the plaintiff received, a letter as follows:

"DEAR JUDGE BOOTH: I have your letter of November 28, 1931, in which you express your desire to retire as United States Circuit Judge for the Eighth Circuit under the provisions of the United States Statutes (Title 28, Section 375, United States Code).

Your retirement is approved, effective January 1, 1932.

I take the occasion to assure you of my best wishes for your future health and happiness, and to thank you for the valued service you have rendered.

Yours faithfully, Herbert Hoover."

5. On January 1, 1932, the retirement of the plaintiff as a United States Circuit Judge became effective pursuant to his request as aforesaid. Ever since January 1, 1932, plaintiff has continued to perform the duties of a retired United States Circuit Judge in the manner provided by law, and has sat as a member of the United States Circuit Court of Appeals for the Eighth Judicial Circuit at a number of terms thereof, and has participated in the hearing and decision of many causes pending in that court, and has performed many judicial acts, and frequently has made judicial orders in causes pending in said court or in the United States District Court for the District of Minnesota.

6. At the date of the appointment of the plaintiff as a United States Circuit Judge the salary of Circuit Judges was fixed by law at $8500 per annum, and at the date of his retirement the salary fixed by the Act of December 13, 1926, c. sec. 1, 44 Stat. 919 (U. S. Code, title 28, sec. 213) for United States Circuit Judges was the sum of $12,500 per annum, payable in equal monthly installments. Sec- [fol. 9] tion 13 of the Independent Offices Appropriation Act, approved June 16, 1933 (Public Act No. 78), contains the following provision:

"For the period of the fiscal year ending June 30, 1933, remaining after the date of the enactment of this Act, and during the fiscal year ending June 30, 1934, the retired pay of judges (whose compensation, prior to retirement or resignation, could not, under the Constitution, have been diminished) is reduced by 15 per centum."

Pursuant to the provisions of said Act, and for the period from June 1, 1933, to and including October 31, 1933, plaintiff has been paid by the United States on account of his

salary as United States Circuit Judge, retired, the sum of $4510.40, and no more, and by reason thereof there has been wrongfully withheld from the plaintiff for the period mentioned the sum of $697.93.

7. Although the plaintiff, pursuant to section 7, title II of the Act of Congress, approved March 20, 1933, which gives authority to the Treasurer of the United States to receive back 15 per cent of the salaries of judicial officers, voluntarily returned to the United States 15 per cent of his salary for the months of April and May, 1933, he has protested against the enforced reduction attempted by the said Act of June 16, 1933, deeming it his duty to maintain the independence of the judiciary and resist unconstitutional dimimution of the compensation of Federal judges. On the tender to him of reduced compensation for the month of June, 1933, this plaintiff asked of the Attorney General of the United States the legal basis for the reduction by the disbursing officers of the Department of Justice, by whom judicial salaries are paid, and was advised by the Assistant to the Attorney General as follows:

"The Department has not considered the validity of this section [referring to section 13, Public Act No. 78, approved [fol. 10] June 16, 1933]. It is, of course, binding upon the Department and must be complied with by the disbursing clerk in paying the salaries of retired judges, unless and until it is declared invalid by a court of competent jurisdiction."

The reduced compensation paid plaintiff, as aforesaid, has been received by him under protest, and only as payment on account of the salary to which he is entitled by law.

8. Section 1 of Article III of the Constitution of the United States provides:

"The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office."

Notwithstanding his retirement the plaintiff has continued to hold the office of United States Circuit Judge, and the said Act of June 16, 1933, attempting to diminish his compensation during his continuance in office is unconstitutional, null and void.

9. Plaintiff is informed that action similar to that taken in the plaintiff's case has been taken by the disbursing officers of the Department of Justice in the cases of all retired Circuit and District Judges of the United States, and while reluctant to institute a suit which may result in personal benefit to himself, plaintiff deems it his duty to maintain the constitutional independence of the judiciary, and to have the question as to the validity of said Act of June 16, 1933, judicially settled.

10. Plaintiff further states that he is the legal owner of the claim for said compensation, and there has been no [fol. 11] assignment of the whole or any part thereof, and that as far as he knows no action has been had thereon either in the congress or in any of the departments of the Government, except as stated in this petition; that he is justly entitled to the amount claimed, including all just credits and offsets; that he has at all times borne true faith and allegiance to the Government of the United States, and has not at any time voluntarily aided, abetted or given encouragement to rebellion against it.

Wherefore, the plaintiff prays judgment that he have and recover from the United States the sum of $697.93, and that he have such other relief as the nature of his case may require.

William F. Booth, Plaintiff. William D. Mitchell, John S. Flannery, Hibbs Bldg., Washington, D. C., Attorneys for Plaintiff.

STATE OF MINNESOTA,
County of Hennepin, ss:

I, Wilbur F. Booth, under oath, depose and say, that I have read the foregoing petition by me subscribed, and know the contents thereof; that the matters and things therein stated are positively true, and those stated on information and belief I believe to be true.

Wilbur F. Booth.

Subscribed and sworn to before me this 3rd day of November, 1933.

Thomas H. Howard, Notary Public, Ramsey County.
My commission expires June 12, 1936. (Seal.)

[fol. 12] CLERK'S CERTIFICATE

I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of Wilbur F. Booth v. The United States, No. 42540, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 13th day of December, A. D., 1933.

Willard L. Hart, Chief Clerk, Court of Claims of the United States. (Seal Court of Claims.)

Endorsed on cover: File No. 38,259. Court of Claims. Term No. 656. Wilbur F. Booth vs. The United States. Certificate. Filed December 14, 1933. File No. 656, O. T., 1933.